

EXHIBIT 27

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
ORACLE AMERICA, INC.
Plaintiff,
vs. Case No. 3:10-cv-03561-WHA
GOOGLE, INC.,
Defendants.

VIDEO DEPOSITION OF OLIVIER TOUBIA, Ph.D.
San Francisco, California
Thursday, March 10, 2016
Volume I

REPORTED BY:
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JOB NO. 2265295
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analysis.

Q. So even if the changes from the pre-test to the final survey are minimal, the pre-test results still need to be excluded?

A. I would say so, yes.

Q. Okay. So in your paper or in your report, you recite -- let's see -- it's footnote 100 --

A. Uh-huh.

Q. -- to "The Practice of Survey Research: Theory and Applications."

Have you reviewed that citation recently or paper recently?

A. I have reviewed it recently. I haven't memorized the entire article.

Q. So in that paper, the author suggests that inclusion of a pre-test survey -- or survey results, rather, can be okay in some situations.

Do you -- do you remember reading that?

A. No, I don't.

Q. Okay. I don't know if I have that with me, actually. We may have to talk about it later.

But assuming that the article does, in fact, say that, is it your opinion that that portion of the article is wrong?

A. There is a significant debate today in social sciences and also in hard sciences about replication and -- and reporting of -- of results.

And there is, in particular -- there has been concerns in the recent past of researchers strategically manipulating the sample size to achieve desired -- desired results.

People have lost -- lost their -- lost their jobs on this and their reputation. This is something that is taken very seriously today in academia.

And any level that could allow researchers to decide after the fact whether or not to include certain respondents in the analysis, presumably based on seeing the results from -- from these respondents, all that would include increasing the sample size and see all desired results would be achieved is something that is frowned upon today in academia.

And so this is one of the issues with -- in deciding after the fact whether or not to include pre-test respondents is -- one of the issues is the concern that this gives the researcher the ability to decide after the fact whether or not to include the respondents, which

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might be done in a way that serves the -- the -- the researcher.

Q. So -- but in regard to your concern, what if a researcher excluded the pre-test survey results and then changed the questions so as to get a favorable result in the next round?

Isn't the same concern present with excluding or including pre-test survey results?

A. This is a different concern.

Q. How is it different?

A. Because in one case the researcher would, you know, decide on -- on who to include in the sample size based on the results. In the other case the researcher would change the -- the instruments based on the pre-test.

If the -- if the change from the pre-test to the main survey is very large, then this becomes also an issue. And that's -- relates to the issue of -- of publication bias and reporting bias, in which some researchers might run ten studies and only report three of them which provide results.

That's -- that also is factory to them.

So if -- if a researcher were to dramatically change the survey after the pre-test to run effectively another survey, that could

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possibly be also an issue.

Usually, pre-test are used to confirm that a survey is well written and the instructions are clear and to make minor changes to the survey.

Q. And that's what Dr. Simonson did. He used the pre-test and made two minor changes after.

A. That is correct.

Q. And in your opinion, even though the changes were minor, you believed the pre-test results should have been excluded.

A. That is correct.

Q. And that opinion applies to any survey across the board; is that correct?

A. If I review an article for -- for an academic journal and I see that the pre-test was included, as a matter of principle, I would be very concerned.

There would have to be very compelling arguments for doing the pre-test. And it is hard for me to see -- to think of an argument that would convince me that the pre-test should be included, unless it was decided from the beginning, before the pre-test was run, that the pre-test would be included in the final sample.

Q. And do you have any -- are there any

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